

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF POWERTEL/MEMPHIS, INC.)	
D/B/A T-MOBILE KENTUCKY FOR A)	CASE NO.
CERTIFICATE OF PUBLIC CONVENIENCE)	2009-00067
AND NECESSITY FOR CONSTRUCTION OF A)	
WIRELESS COMMUNICATIONS FACILITY)	

O R D E R

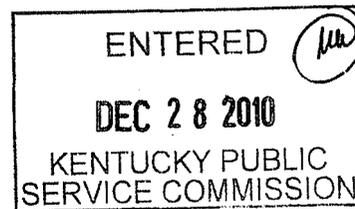
On February 26, 2009, Powertel/Memphis, Inc. d/b/a T-Mobile Kentucky filed an application for a Certificate of Public Convenience and Necessity ("CPCN") to construct a wireless communications facility in Henderson County, Kentucky, within the geographical boundaries of a local planning and zoning commission. On April 6, 2009, the Commission issued an Order holding this case in abeyance. In support of its decision for abeyance, the Commission stated that it would render a decision on the application once the Supreme Court of Kentucky issued a ruling in *Kentucky Public Service Commission v. Shadoan*, ___ S.W.3d ___, 2010 WL 4679513 (Ky. Nov. 18, 2010). The Commission sought discretionary review of the decision by the Kentucky Court of Appeals wherein that court had held, inter alia, that, under KRS 278.665, the Commission has jurisdiction over wireless tower siting applications for facilities to be located in geographic areas where local planning and zoning commissions exist. On November 18, 2010, the Supreme Court issued a decision in *Shadoan* stating that the Commission does not have jurisdiction to accept or approve CPCN applications for towers to be geographically located inside the jurisdictional boundaries of existing local

planning commissions. The Supreme Court's decision became final on December 8, 2010. Based upon the Supreme Court decision in *Shadoan*, the Commission finds that it does not have jurisdiction over the application contained in this proceeding, since the proposed site is within the geographical boundaries of a local planning and zoning commission, and that this case should be dismissed for lack of jurisdiction and removed from the Commission's docket.

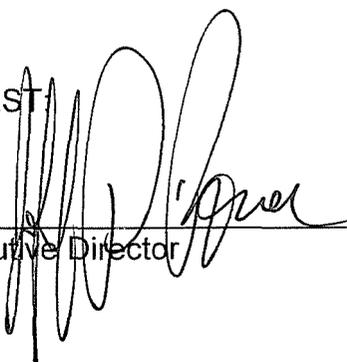
IT IS THEREFORE ORDERED that:

1. This case is lifted from abeyance.
2. This case is dismissed and removed from the Commission's docket.

By the Commission



ATTEST



Executive Director

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